XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(50)

AFR
12/09/07

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Single Bench: Hon'ble Mr. Justice Dhirendra Mishra

Cr.M.P. No.354/2007

PETITIONER R.N. Mishra, s/o Shri B. Mishra, Mauhan, aged about 70 years, R/o MIG-783, Veersabarkar Nagar Colony, Heerapur Raipur, Tahsil & Dist. Raipur (C.G.)

Vs

RESPONDENT Manoj Jain, S/o Pukhraj Jain, aged about 31 years, Proprietor- M/s Jain Bricks, Pachmedhi Naka, Raipur (CG)

12.9.2007

Mr. Rakesh Pandey, Adv. for the petitioner.

Heard.

The petitioner has filed this petition under Section 482 of Cr.P.C. against the order dated 19.7.2007 passed in Criminal Revision 90/07 whereby learned 10th Additional Sessions Judge, Raipur has rejected his revision arising out of the order dated 11.5.2007 passed by learned Additional Chief Judicial Magistrate, Raipur in MJC No.146/07 whereby the petitioner has been directed to deposit the fine amount of Rs.1,25,000/- imposed on him by this Court vide order dated 14.8.2006 passed in Criminal Revision No.405/2006.

The short question involved for adjudication of this petition is whether warrant for levy of fine can be issued under Section 421 of Cr.P.C. against an accused, who has been convicted and sentenced to pay fine with stipulation that in default of payment of fine he shall

पीछे

(51)

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

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undergo simple imprisonment for specific period and who has already undergone the simple imprisonment on default of payment of fine?

It is not in dispute that this Court while partly allowing the criminal revision of the petitioner, maintained his conviction, however, the sentence awarded to him was modified by awarding jail sentence for the period already undergone by him and to pay a fine of Rs.1,50,000/- and in default of payment of fine, he was directed to undergo S.I. for 3 months. It has been further directed that out of total amount of fine, Rs.1,25,000/- shall be paid to the complainant Manoj Jain towards principal amount due under the cheque as also towards interest and other expenses. It is also not in dispute that the petitioner did not deposit the fine amount of Rs.1,50,000/- imposed upon him by this Court and in lieu of the same he has undergone the jail sentence of three months, as ordered by this Court.

The warrant for levy of fine is issued under Section 421 of Chapter-XXXII of Cr.P.C., which is reproduced here under:-

> **" 421. Warrant for levy of fine.-** (1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways , that is to say, it may-

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(52)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender.

(b) issue a warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property or both, of the defaulter.

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357."

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realize the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law;

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

पोल

XI-HC-22

(53)

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

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From perusal of the proviso to Section 421 it is evident that where the sentence directs that in default of payment of fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, warrant is not to be issued unless special reasons are recorded for the same or unless the court has made an order for the payment of expenses or compensation out of the fine under Section 357.

Both the courts below taking into account the order passed by this Court that out of the amount of fine i.e. Rs.1,50,000/-, a sum of Rs.1,25,000/- is payable to the complainant being the amount against the cheque, interest and other expenses incurred by the complainant, have directed the petitioner in view of the proviso to Section 421 of Cr.P.C. to deposit the above sum payable to the complainant.

In view of the proviso to Section 421 of Cr.P.C. the above order is strictly in accordance with the law and the same does not call for interference by this Court.

In the result, the petition has no substance, the same is liable to be dismissed and it is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

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